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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF WASHINGTON

12 PAUL STRASTERS and)
13 ZADELLE STRASTERS,)
14 a married couple,)
15)
16 Plaintiffs,) NO. CV-10-3070-RHW
17)
18 vs.) PLAINTIFF'S BRIEF IN
19) OPPOSITION TO DEFENDANT'S
20 WEINSTEIN & RILEY, P.S.,) MOTION FOR SUMMARY
21 a debt collection agency;) JUDGMENT
22)
23 Defendants.)
24)
25 _____

26

27 INTRODUCTION

28 On May 6, 2011, Weinstein & Riley, P.S. (W&R) moved for summary
29 judgment in this case based upon the argument that Paul and Zadelle Strasters (the
30 Strasters) and Wells Fargo Bank N.A. (Wells Fargo) have negotiated a universal
31 settlement in this case. However, W&R is fully aware that this is not true. W&R
32 is not a party to the contract. W&R did not give Wells Fargo's attorneys authority
33 to negotiate a settlement agreement. W&R was never the attorneys for Wells

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1 Fargo in the above entitled case. And finally, the Strasters have consistently
2 referred to W&R as debt collectors rather than as attorneys. As such, W&R's
3 motion is the height of frivolity, wholly without merit and meant to cause
4 annoyance to the Plaintiffs and waste judicial resources.

5 **ARGUMENT AND AUTHORITIES**

6 **A. Legal Standard Applicable To Defendant's Motion For Summary**

7 **Judgment.**

8 The sole consideration in a summary judgment is whether the
9 pleadings, affidavits and other relevant documents demonstrate that there is no
10 genuine issue of material fact. FRCP 56(a). If there is no genuine issue of
11 material fact then the movant is entitled to a judgment as a matter of law.

12 As this motion is about whether the contract between the Strasters and Wells
13 Fargo also extinguished the Strasters claim against W&R, the only material issue is
14 one of contractual interpretation. Contract interpretation is a question of law.

15 *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v.*
16 *California*, 618 F.3d 1066, 1070 (9th Cir. 2010).

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1 **B. The Rule Of Contractual Interpretation Dictate That Weinstein &**
2 **Riley, P.S.'s Argument Must Be Rejected.**

3 This settlement agreement is governed by the laws of Washington. See
4 Exhibit "A" at 3. Under Washington law, "the touchstone of the interpretation of
5 contracts is the intent of the parties." *Scott Galvanizing, Inc. v. Nw.*
6 *EnviroServices, Inc.*, 120 Wash.2d 573, 580 (Wash. 1993). Accordingly, issues of
7 contractual interpretation only arise when the parties to the contract have differing
8 interpretations of the contract. This contract only has two parties as is explicitly
9 stated on the first page. *Strasters v. Weinstein & Riley P.S.*, ECF No. CV-10-3070-
10 RHW Docket Number 41 Exhibit "A". The only parties to the contract are the
11 Strasters and Wells Fargo. Hence, the only relevant intentions as to the
12 interpretation of the contract are those of the Strasters and Wells Fargo.

13 If Wells Fargo had intended for the settlement agreement to cover W&R it
14 seems unlikely that Wells Fargo would have drafted a Stipulation of Dismissal
15 which excluded W&R from dismissal. *Strasters v. Weinstein & Riley P.S.*, ECF
16 No. CV-10-3070-RHW Docket Number 30. Furthermore it is far from clear that if
17 W&R did think it was a party at the time of the settlement agreement why it would
18 sign a Stipulation of Dismissal which did not include itself as a party. *Id.* Finally,
19 W&R has produced no affirmative evidence that Wells Fargo did intend to include
20 W&R in the settlement agreement.

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1 W&R's fanciful interpretation of the contract is irrelevant. Indeed, W&R
2 has not provided even a shred of legal precedent to support its disingenuous and
3 novel claim that it has the right to enforce a self-interested interpretation of a
4 contract to which it is not a party. If a legal rule were accepted that a un-named
5 hypothetical third party to a contract had the right to sue to enforce its own
6 interpretation of the contract, the whole law of contract would be thrown into
7 disarray. As such there is no legal or equitable basis on which W&R's argument
8 can be maintained.

9

10 **C. Weinstein & Riley P.S. Is Not Wells Fargo's Attorney.**

11 Contrary to W&R's assertion that there is no dispute over whether W&R is
12 Wells Fargo attorney, the very fact that Lane Powell made an appearance as Wells
13 Fargo's attorney is irrefutable evidence that W&R is not Wells Fargo's attorney for
14 purposes of this lawsuit. Additionally, the Strasters have consistently claimed that
15 W&R is a debt collector for purposes of this lawsuit. Also, it is undisputed that
16 under the FDCPA, W&R are debt collectors. Essentially, W&R is arguing that
17 because it considers itself as Wells Fargo's law firm rather than as Wells Fargo's
18 debt collector that the Strasters must also by law consider W&R Wells Fargo's law
19 firm. In addition to the fact that this argument is unable to be supported by any

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1 legal precedent, such an argument does not even maintain a purely sophistic
2 appeal.

3

4 **D. Accepting Weinstein & Riley P.S.'s Argument Would Discourage**
5 **Settlements.**

6 W&R posits that federal case law favors settlement agreements and their
7 general enforceability. It then argues that this policy would be best served by
8 judicially rewriting settlement agreements between certain parties to a lawsuit to
9 include all parties to the lawsuit. This practice would instead have a deleterious
10 effect on settlement agreements. First, no settlement agreement would be final
11 since any third party could potentially read itself into the terms. This would result
12 in a good deal of frivolous, harassing and needlessly expensive litigation.

13 Second, any potential settlement would be held hostage by one recalcitrant
14 party. Thus even if one of the defendants felt that a particular settlement
15 agreement is attractive and is willing to pay half of the amount demanded, no
16 plaintiff would accept this knowing he would then forfeit his full recovery since
17 the remaining defendant would allege "settlement" and "double recovery". Thus
18 reasonable defendants would be forced to incur much greater attorney fees to
19 subsidize the whims or obstinacy of their co-defendants. This is not an equitable
20 situation and as such Defendant's motion should be denied in its entirety.

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2 **CONCLUSION**

3 Defendant has requested that this Court throw out well established rules of
4 contractual construction in favor of adopting new rules under which an un-named
5 third party to a contract can sue at court to reinterpret a contract to create legal
6 rights against one of the parties. Furthermore, Defendant does not cite even one
7 case which might even suggest that such an argument has any merit. As such
8 Defendant has willfully engaged in an unnecessary and onerous legal proceeding
9 solely for the purpose of harassing the Plaintiff and wasting judicial resource. As
10 such, Defendant's motion should be denied and Defendant should be sanctioned.

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12 Dated this 16 day of June, 2011.

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16 Robert J. Reynolds WSBA #5796
17 Attorney for Plaintiff

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